

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO *et al.*

Debtors.<sup>1</sup>

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**Re: Dkt. 2159**

**URGENT MOTION OF AURELIUS FOR LEAVE  
TO FILE SUR-REPLY BRIEF**

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<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, and Lex Claims, LLC (“Aurelius”), respectfully state as follows:

1. Ignoring this Court’s applicable scheduling order, which plainly provided for “all parties to reply to the *United States*,” Dkt. 1392 at 2 (emphasis added), the Financial Oversight and Management Board for Puerto Rico (the “Board”) has filed what can only be described as a sur-reply to Aurelius’s *Reply Brief in Support of Objection and Motion to Dismiss the Title III Petition*, Dkt. 1833, instead of a reply to the United States.

2. For instance, conspicuously absent from the brief of the United States, Dkt. 1929, is any argument refuting Aurelius’s reliance on the Attorney General’s opinion *Executive Authority To Remove the Chief Justice of Minnesota*, 5 Op. Att’y Gen. 288, 290 (1851), which plainly overrode the early opinion in *Territorial Judges Not Liable to Impeachment*, 3 Op. Att’y Gen. 409, 411 (1839). Similarly, the United States never attempts to refute Aurelius’s argument that Presidents have engaged in recess appointments in the territories, including in Puerto Rico, using the Appointments Clause. Nor does the United States ever respond to the constitutional significance of the presidential commissioning of officers in the territories. And the United States stands similarly silent on the issue of whether the Appointments Clause is “fundamental” as it concerns the *Insular Cases*.

3. Yet the Board has responded to all of these arguments, *e.g.* Dkt. 2159 at 6 n.5, 8, 9 n.7, 11–12, and others advanced in Aurelius’s reply brief but not addressed by the United States. That does not constitute a “reply to the United States.”

4. The Board’s tactic is deeply unfair, and violates both the text and spirit of this Court’s briefing schedule, which at no point provides the Board, or any other party or party in interest,

with a sur-reply to Aurelius—who is the moving party here. And it vastly enlarges the amount of briefing in opposition to Aurelius.

5. Aurelius thus respectfully requests leave to file a sur-reply of no more than 10 pages addressing the arguments advanced in the Board’s “reply” to the United States, as well as the arguments of any other party or party in interest who files such a “reply” to the brief of the United States before the deadline for filing on December 23, 2017. Aurelius proposes that this sur-reply be due on January 5, 2018. This sur-reply would be in addition to Aurelius’s reply to the United States due on December 23, 2017. This schedule is reasonable given the intervening holidays and the number of briefs that Aurelius will need to review, and it still allows the parties and the Court five days to review Aurelius’s sur-reply before the hearing on January 10, 2018.

6. Aurelius certifies that it reached out to counsel for the Board, and that counsel for the Board did not consent to this proposal, and the parties were otherwise unable to come to an agreement. A proposed order is attached as Exhibit A.

Dated: December 23, 2017

/s/ Lourdes Arroyo-Portela

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Respectfully submitted,

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## **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO *et al.*

Debtors.<sup>2</sup>

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**ORDER GRANTING URGENT MOTION OF AURELIUS FOR LEAVE  
TO FILE SUR-REPLY BRIEF**

Upon the *Urgent Motion of Aurelius for Leave to File Sur-reply Brief* (the “Urgent Motion”), and any objections being overruled, it is **HEREBY ORDERED THAT**:

1. The Urgent Motion is granted.
2. Aurelius may file a sur-reply in support of its *Objection and Motion to Dismiss the Title III Proceeding* of no more than 10 pages, excluding case caption, table of contents and authorities, signature pages, and any exhibits, to be filed no later than January 5, 2018.

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<sup>2</sup> The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

3. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

SO ORDERED.

Dated: \_\_\_\_\_  
San Juan, Puerto Rico

LAURA TAYLOR SWAIN  
United States District Judge